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 DATE 8-6-04

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

Lynda Gauthier,

Plaintiff,

VS.

Ann M. Veneman,
 Secretary, Department
 of Agriculture,

Defendant.

) CIVIL ACTION NO.

04 - 11733 PBS

MAGISTRATE JUDGE Alexander

COMPLAINT AND JURY DEMAND

JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1331, together with 42 U.S.C. sections 2000e-5 and 2000e-16. Specifically, this is a complaint stating a cause of action under Title VII of the Civil Rights Act of 1964, as amended, alleging discriminatory treatment of the plaintiff in her employment with the defendant on the basis of her gender.

Further, the complaint sets forth claims brought under the Rehabilitation Act of 1973, 29 USC 791, et seq. insofar as the plaintiff alleges that she suffered disability discrimination.

VENUE

2. The venue of this Court to entertain this cause of action is appropriate by virtue of 42 U.S.C. § 2000e-5(f) insofar as all of the actions central to this case occurred in this judicial district.

THE PARTIES

3. The plaintiff, Lynda Gauthier, a female, resides in the Commonwealth of Massachusetts with a principal residence at 282 Glendale Road, in Northampton. At the time of the events central to her claims, she was employed by the United States Department of Agriculture as an Information Resource Manager, GS-12, with agency's Rural Development Office in Amherst, Massachusetts.

4. The United States Department of Agriculture (hereinafter "the agency") is an administrative agency of the United States Government with its principal offices in Washington, D.C. Ann Veneman is the Secretary of that agency and is named in her capacity as its head.

ADMINISTRATIVE PROCEEDINGS

5. Within the time prescribed by law, on January 2, 2002, the plaintiff filed an administrative complaint of employment discrimination with the agency. On April 30, 2004, the agency issued its final decision relative to that complaint, finding that it had not discriminated against the plaintiff. Through its final decision, the agency provided the plaintiff with notice of her right to take her claims into federal court. The plaintiff has exhausted her administrative remedies with the agency insofar as the agency has issued its Final Decision denying her claims.

THE CONTROVERSY

6. For her cause of action against Ann Veneman, in her capacity as Secretary of the agency, the plaintiff states as

follows:

7. That at all times relevant to this action, the plaintiff has been employed by the agency as an Information Resource Manager, GS-14, working from the agency's Rural Development Office in Amherst, Massachusetts.

8. From June of 1999 through October of 2001, the agency, through the plaintiff's managers, were aware that the plaintiff suffered from disabling conditions, including major depression, chronic fatigue, sleep disorders and anxiety, and was treating with her medical care providers concerning those illnesses.

9. The plaintiff requested accommodation from her managers relative to her disabilities beginning in April of 2001, including flexibility relative to her starting times and her continued participation in a Maxi-flex program used by the agency.

10. On September 13, 2001, the plaintiff's manager removed her from the Maxi-flex program. Her managers further failed to accommodate her actual and/or perceived disabilities by scrutinizing her arrival times, issuing discipline against her and harassing her to the point that she would break down in tears. Her manager's conduct was calculated to exacerbate her medical condition and represented a pattern of continuing and ongoing harassment of her.

11. Other employees were permitted to continue to participate in the Maxi-flex program, including those outside her protected category. Some were permitted to do so without any

medical condition and without the requirement that they submit documentation justifying such participation. The plaintiff, however, had that requirement imposed upon her.

CAUSES OF ACTION

COUNT I

12. The plaintiff incorporates by reference the averments of paragraphs one through eleven as though fully set forth at length herein.

13. The defendant has acted in violation of Title VII of the 1964 Civil Rights Act insofar as she has unlawfully discriminated against the plaintiff on the basis of her gender.

14. As a direct and proximate result of such discrimination, the plaintiff has and continues to suffer damages, including, without limitation, economic damages and pain and suffering of mind and body.

COUNT II

15. The plaintiff incorporates by reference the averments of paragraphs one through eleven as though fully set forth at length herein.

16. The defendant has discriminated against the plaintiff on the basis of her actual and/or perceived disability.

17. As a direct and proximate result of such discrimination, the plaintiff has and continues to suffer damages, including, without limitation, economic damages and pain and suffering of mind and body.

COUNT III

18. The plaintiff incorporates by reference the averments of paragraphs one through eleven as though fully set forth at length herein.

19. The defendant's ongoing and continuous discriminatory conduct created a hostile work environment for the plaintiff.

20. As a direct and proximate result of such retaliatory conduct, the plaintiff has and continues to suffer damages, including, without limitation, economic damages and pain and suffering of mind and body.

DEMAND FOR RELIEF

21. The plaintiff respectfully demands the following relief from the defendant, Ann Veneman, in her capacity as the Secretary for the United States Department of Agriculture:

a. Enter a declaratory judgment determining that the plaintiff suffered discriminatory treatment as alleged in the above Counts I, II and III;

b. Award compensatory damages to the plaintiff under the Civil Rights Act of 1991;

c. Assess against the defendant, the costs and expenses incurred by the plaintiff in maintaining this proceeding, together with reasonable attorneys fees incurred by her in prosecuting the above-captioned case;

d. Any and all other relief to which the plaintiff may be entitled.

JURY DEMAND

The plaintiff demands trial by jury on all issues raised
herein.

FOR THE PLAINTIFF

By her Attorney,


Waite P. Stuhl, Esq.
6342 Waterman Ave.
St. Louis, MO 63130
(314) 726-1182
(314) 863-1904 fax
BBO # 548324

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

LYNDA GAUTHIER

DEFENDANTS

ANN VENEMAN,
SECY DEPT OF AGRICULTURE(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

WAITE, ST. VHL
6342 WATERMAN AVE
ST. LOUIS, MO 63130

Attorneys (If Known)

4 - 11733 PBS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

DEF Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 472 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 363 Personal Injury Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> LABOR	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenges 12 USC 3410
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 861 HIA (13 95ff)
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 810 Motions to Vacate Sentence	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 863 DIW C/DIW W (405(r))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 520 General	<input type="checkbox"/> 864 SSTD Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RST (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 900 Appeal of Final Judgment
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Trial Court Judgment
		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 930 Constitutionality of State Statutes
				<input type="checkbox"/> 990 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from another district (specify)

Reinstated or Reopened

 4 Multidistrict Litigation 5 (specify)

Appeal to District Judge from Magistrate Judge

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you file and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 USC 791 et seq. - Federal employee alleging employment discrimination
Failure to accommodate

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDG

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IEP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) LYNDA GUTHIER v. ANN VENEMAN

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases**04-11733 PBS**

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d))

*1 party other than govt*YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME WHITE P. STUHLADDRESS 6342 WATERMAN AVE., ST. LOUIS, MO 63130TELEPHONE NO. (314) 726-1182 FAX (314) 863-1904